

**STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES**

**BILL OF SALE AND CONTRACT FOR  
FOREST PRODUCTS**

**Export Restricted Tonnage Scale AGREEMENT NO. 30-076491**

**SALE NAME: ARIA PC**

**THE STATE OF WASHINGTON DEPARTMENT OF NATURAL  
RESOURCES, HEREINAFTER ACTING SOLELY, IN ITS PROPRIETARY  
CAPACITY, STATE, AND PURCHASER, AGREE AS FOLLOWS:**

**Section G: General Terms**

**G-010 Products Sold and Sale Area**

Purchaser was the successful bidder on December 13, 2004 and the sale was confirmed on \_\_\_\_\_. The State, as owner, agrees to sell to Purchaser, and Purchaser agrees to purchase, cut, and remove the following forest products: All timber as described in Schedule B, except trees marked with a ring of blue paint, cedar snags, and dead and down cedar trees, logs and stumps bounded as follows: by white timber sale boundary tags, logged areas, HM-ML, and designated skid trail known as Higgins Mountain Trail in Unit #1; by white timber sale boundary tags, blue management unit boundary tags, orange right of way tags, designated skid trail known as Higgins Mountain Trail and the HM-ML in Unit #2; by white timber sale boundary tags, blue management unit boundary tags, orange right of way tags, logged areas, HM-20, and the HM-ML in Unit #3; by blue management unit boundary tags, orange right of way boundary tags, logged areas, and the HM-ML in Unit #4; by white timber sale boundary tags, logged areas, and the HM-ML in Unit #5; by white timber sale boundary tags, blue management unit boundary tags, orange right of way boundary tags, logged areas, and the HM-ML in Unit #6; all timber bounded by white timber sale boundary tags associated with development of the HM-21 rockpit; all timber bounded by right of way boundary tags, except that title to the timber within the right of way boundary tags of the HM-18 Road from station 0+00 to station 12+12, the HM-1802 Road from station 0+00 to station 1+71, the HM-22 Road from station 0+00 to station 14+13, and the HM-21 Road from station 0+00 to station 3+79 is not conveyed to the Purchaser unless the road segment is actually constructed,, located on approximately 274 acres on part(s) of Sections 25, and 36 all in Township 33 North, Range 7 East W.M. in Skagit County(s) as shown on the attached timber sale map and as designated on the sale area. Timber purchased under a contract that is designated as export restricted shall not be exported until processed. Timber purchased under a contract that is designated as exportable may be exported prior to processing.

**G-020 Inspection By Purchaser**

Purchaser hereby warrants to the State that they have had an opportunity to fully inspect the sale area and the forest products being sold. Purchaser further warrants to the State that they enter this contract based solely upon their own judgment of the value of the forest products, formed after their own examination and inspection of both the timber sale area and the forest products being sold. Purchaser also warrants to the State that they enter this contract without any reliance upon the volume estimates, acreage

estimates, appraisals, pre-bid documentation, or any other representations by the State Department of Natural Resources.

G-025 Schedules

The following attached schedules are hereby incorporated by reference:

Schedule	Title
A	Aria PC Ground-Based Equipment Specifications
B	Aria PC Thinning Prescription
C	Aria PC Required Removal of Forest Products

G-030 Contract Term

Purchaser shall remove the forest products conveyed and complete all work required by this contract prior to September 30, 2007.

G-040 Contract Term Adjustment - No Payment

Purchaser may request an adjustment in the contract term. A claim must be submitted in writing and received by the State within 30 days after the start of interruption or delay. The claim must also indicate the actual or anticipated length of interruption or delay. The State may grant an adjustment without charge only if the cause for contract term adjustment is beyond Purchaser's control. The cause must be one of the following and the adjustment may be granted only if operations or planned operations under this contract are actually interrupted or delayed:

- a. Road and bridge failures which deny access.
- b. Access road closures imposed by road owner.
- c. Excessive suspensions as provided in clause G-220.
- d. Regulatory actions not arising from Purchaser's failure to comply with this contract which will prevent timber harvest for a period less than 6 months.

G-050 Contract Term Extension - Payment

Extensions of this contract term may be granted only if, in the judgment of the State, Purchaser is acting in good faith and is endeavoring to remove the forest products conveyed. The term of this contract may be extended for a reasonable time by the State if all of the following conditions are satisfied:

- a. A written request for extension of the contract term must be received prior to the expiration date of the contract.
- b. Completion of all required roads and compliance with all contract and regulatory requirements.
- c. For the first extension, not to exceed 1 year, payment of at least 25 percent of the contract value based on the contract payment rate and advertised volume.

For the second extension, not to exceed 1 year, payment of at least 90 percent of the contract value based on the contract payment rate base and advertised volume.

The payments shall not include the initial deposit which shall be held according to the provisions of RCW 79.15.100.

- d. Payment of an amount based on 12 percent interest per annum on the unpaid portion of the timber value of the contract.

To determine the unpaid portion of the contract, multiply the contract payment rate for each item by the remaining volume for each item based on the volumes from the Timber Notice of Sale. In addition, all cash deposits that can be used for timber payments, except the initial deposit, will be deducted from the unpaid portion of the contract.

- e. Payment of \$2.50 per acre per annum for the acres on which an operating release has not been issued.

f. In no event will the extension charge be less than \$200.00.

g. Extension payments are non-refundable.

G-053 Surveys - Sensitive, Threatened, Endangered Species

Whenever the State determines that a survey for sensitive, threatened, or endangered species is prudent, or when Purchaser determines a survey is prudent and the State agrees, Purchaser shall perform such surveys at Purchaser's expense and to the standards required by the State. The survey information shall be supplied to the State.

G-060 Exclusion of Warranties

The PARTIES AGREE that the IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE and ALL OTHER WARRANTIES EXPRESSED OR IMPLIED ARE EXCLUDED from this transaction and shall not apply to the goods sold. For example, THE FOLLOWING SPECIFIC MATTERS ARE NOT WARRANTED, and are EXCLUDED from this transaction:

- a. The MERCHANTABILITY of the forest products. The use of the term "merchantable" in any document is not intended to vary the foregoing.
- b. The CONDITION of the forest products. The forest products will be conveyed "AS IS."
- c. The ACREAGE contained within any sale area. Any acreage descriptions appearing in the timber notice of sale, timber sale contract, or other documents are estimates only, provided solely for administrative and identification purposes.
- d. The VOLUME, QUALITY, OR GRADE of the forest products. The State neither warrants nor limits the amount of timber to be harvested. The descriptions of the forest products to be conveyed are estimates only, made solely for administrative and identification purposes.
- e. The CORRECTNESS OF ANY SOIL OR SURFACE CONDITIONS, PRE-SALE CONSTRUCTION APPRAISALS, INVESTIGATIONS, AND ALL OTHER PRE-BID DOCUMENTS PREPARED BY OR FOR THE STATE. These documents have been prepared for the State's appraisal purposes only.
- f. THAT THE SALE AREA IS FREE FROM THREATENED OR ENDANGERED SPECIES or their habitat. The State is not responsible for any interference with forestry operations that result from the presence of any threatened or endangered species, or the presence of their habitat, within the sale area.
- g. THAT THE FORESTRY OPERATIONS to be performed under this contract WILL BE FREE FROM REGULATORY ACTIONS by governmental agencies. The State is not responsible for actions to enforce regulatory laws, such as the Washington Forest Practices Act (chapter 76.09 RCW), taken by the Department of Natural Resources or any other agency that may affect the operability of this timber sale.
- h. Items contained in any other documents prepared for or by the State.

G-062 Habitat Conservation Plan

The State has entered into a Habitat Conservation Plan (HCP) with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (the Services) to address state trust land management issues relating to compliance with the Federal Endangered Species Act. The activities to be carried out under this contract are located within the State's HCP area and are subject to the terms and conditions of the HCP, and the Services' Incidental Take Permit Nos. 812521 and 1168 (collectively referred to as ITP), or as amended hereafter by the Services. The ITP authorizes the incidental take of certain federally listed threatened and endangered species, as specified in the ITP

conditions. All HCP materials, including the ITP, are available for review at the State's Regional Offices and the administrative headquarters in Olympia, Washington.

By signing this contract, Purchaser agrees to comply with the terms and conditions of the ITP, and the HCP, which shall become terms of this contract. The State agrees to authorize the lawful activities of the Purchaser carried out pursuant to this contract, PROVIDED the Purchaser remains in compliance with the terms and conditions of both the HCP and ITP. The requirements set forth in this contract are intended to comply with the terms and conditions of the HCP and ITP. Accordingly, non-compliance with the terms and conditions of the HCP and ITP will render the authorization provided in this paragraph void, be deemed a breach of the contract and may subject Purchaser to liability for violation of the Endangered Species Act.

Any modifications to the contract shall be proposed in writing by Purchaser, shall continue to meet the terms and conditions of the HCP and ITP, and shall require the prior written approval of the Region Manager before taking effect.

**G-063 Incidental Take Permit Notification Requirements**

- a. Purchaser shall immediately notify the Contract Administrator of new locations of permit species covered by the Incidental Take Permits (ITP) that are discovered within the area covered by the State's Habitat Conservation Plan (HCP), including, but not limited to: locations of occupied murrelet habitat; spotted owl nest sites; wolves; grizzly bears; nests, communal roosts, or feeding concentrations of bald eagles; peregrine falcon nests; Columbian white-tailed deer; Aleutian Canada geese; Oregon silverspot butterflies; and additional stream reaches found to contain bull trout. Purchaser is required to notify the Contract Administrator upon discovery of any fish species found in streams or bodies of water classified as non-fish bearing. In all circumstances, notification must occur within a 24 hour time period.
- b. Upon locating any live, dead, injured, or sick specimens of any permit species covered by the ITP, Purchaser shall immediately notify the Contract Administrator. Purchaser shall notify the Contract Administrator if there is any doubt as to the identification of a discovered permit species. Purchaser may be required to take certain actions to help the Contract Administrator safeguard the well-being of any live, injured or sick specimens of any permit species discovered, until the proper disposition of such specimens can be determined by the Contract Administrator. Any such requirements will be explained to Purchaser by the Contract Administrator during the Pre-Work Conference. In all circumstances, notification must occur within a 24 hour time period.
- c. Purchaser shall refer to a specific ITP number, PRT-812521 or ITP 1168 (copies which are located in the region office) in all correspondence and reports concerning permit activities.
- d. Provisions and requirements of the ITP shall be clearly presented and explained to Purchaser by Contract Administrator during the Pre-Work Conference as per contract clause G-330. All applicable provisions of the ITP and this schedule must be presented and clearly explained by Purchaser to all authorized officers, employees, contractors, or agents of Purchaser conducting authorized activities in the timber sale area. Any questions Purchaser may have about the ITP should be directed to the Contract Administrator.

**G-064 Permits**

Purchaser is responsible for obtaining any permits not already obtained by the State that relate to Purchaser's operation. Forest Practice Application and Hydraulic Project Approval permits obtained by the State shall be transferred to Purchaser. Purchaser is responsible for all permits, amendments and renewals.

G-065 Regulatory Disclaimer

The State disclaims any responsibility for, or liability relating to, regulatory actions by any government agency, including actions pursuant to the Forest Practices Act, Ch. 76.09 RCW that may affect the operability of the timber sale.

G-066 Governmental Regulatory Actions

a. Regulatory Risk

Except as provided in this clause, Purchaser assumes all risks associated with governmental regulatory actions, including actions taken pursuant to the Forest Practices Act, Ch. 76.09 RCW, and the Endangered Species Act, 16 U.S.C. 1531-1544 and any Habitat Conservation Plan between the Department of Natural Resources and the U.S. Fish and Wildlife Service or any other agency now in place and as may be amended, or hereafter created, that may affect the operability of the timber sale.

b. Increased Costs

Purchaser shall be responsible for any increased operational costs arising from any applicable foreign or domestic governmental regulation or order that does not cause contract performance to become commercially impracticable or that does not substantially frustrate the purpose of the contract. If impracticability or frustration results from Purchaser's failure to comply with this contract, Purchaser shall remain responsible for payment of the total contract price notwithstanding the impracticability or frustration.

c. Sale Area

When portions of the sale area become subject to a foreign or domestic governmental regulation or order that will likely prevent timber harvest for a period that will exceed six months and Purchaser has complied with this contract, the following shall apply:

- i. If 40 percent or less of the sale area is affected by the governmental regulation or order, the State, at Purchaser's request, shall adjust the total contract price as set forth in paragraph (d) below.
- ii. If 41 percent to 74 percent of the sale area is affected by the governmental regulation or order, the State, at Purchaser's request, shall adjust the total contract price as set forth in paragraph (d) below or terminate the contract. Termination will discharge any unexecuted portion of the contract.
- iii. If 75 percent or more of the sale area is affected by the governmental regulation or order, the State reserves the right to unilaterally terminate the contract and thereby discharge any unexecuted portion thereof. If the State does not exercise this right, the State, at Purchaser's request, shall adjust the total contract price as set forth in paragraph (d) below.

d. Adjustment of Price

When required by clause G-066 (c), the State shall adjust the total contract price by subtracting from the total contract price an amount determined in the following manner: The State shall cause the timber sale area subject to governmental regulation or order to be surveyed. The State shall calculate the percentage of the total sale area subject to the governmental regulation or order. The State shall reduce the total contract price by that calculated percentage, notwithstanding potential variations in species, value, costs, or other items over the total sale area. The State will further reduce the total contract price by the reasonable cost of unamortized roads Purchaser was required to construct but was unable to use for removing timber. A reduction

in total contract price terminates all of the Purchaser's rights to and interest in the timber on the affected sale area.

G-070    Limitation on Damage

In the event of a breach of any provision of this contract by the State, the exclusive remedy available to Purchaser will be limited to a return of the initial deposit, unapplied payments, and credit for unamortized improvements made by Purchaser. The State shall not be liable for any damages, whether direct, incidental or consequential.

G-080    Scope of State Advice

No advice by any agent, employee, or representative of the State regarding the method or manner of performing shall constitute a representation or warranty that said method, manner or result thereof will conform to the contract or be suitable for Purchaser's purposes under the contract. Purchaser's reliance on any State advice regarding the method or manner of performance shall not relieve Purchaser of any risk or obligation under the contract. Purchaser retains the final responsibility for its operations under this contract and State shall not be liable for any injuries resulting from Purchaser's reliance on any State advice regarding the method or manner of performance.

G-090    Sale Area Adjustment

The Parties may agree to adjustments in the sale area boundary. The cumulative changes to the sale area during the term of the contract shall not exceed more than four percent of the original sale area. If the sale area is increased, added forest products become a part of this contract and shall be paid for at the same rate and manner as other forest products under this contract.

G-100    Forest Products Not Designated

Any forest products not designated for removal, which must be removed in the course of operations authorized by the State, shall be approved and designated by the contract administrator. Added forest products become a part of this contract and shall be paid for at the same rate and manner as other forest products under this contract.

G-105    Adding Naturally Damaged Forest Products

Any forest products not designated for removal that are seriously damaged by disease, insects or wind, or that may contribute seriously to the spread of insect or disease damage may be added to this sale by the Contract Administrator. Additions must be in unlogged areas of the sale and added volume shall not exceed an amount equal to 10 percent of the original advertised volume. Added forest products become a part of this contract and shall be paid for at the same rate and manner as other forest products under this contract.

G-110    Title and Risk of Loss

Title to the forest products conveyed passes at confirmation of the sale. Purchaser bears the risk of loss of or damage to and has an insurable interest in the forest products in this contract from the time of confirmation of the sale of forest products. In the event of loss of or damage to the forest products after passage of title, whether the cause is foreseeable or unforeseeable, the forest products shall be paid for by Purchaser. Breach of this contract shall have no effect on this provision. Title to the forest products not removed from the sale area within the period specified in this contract shall revert to the State as provided in RCW 79.15.100.

G-120    Responsibility for Work

All work, equipment, and materials necessary to perform this contract shall be the responsibility of Purchaser. Any damage to improvements, except as provided in clause G-130 or unless the State issues an operating release pursuant to clause G-280, shall be repaired promptly to the satisfaction of the State and at Purchaser's expense.

G-130    Exceptions

Exceptions to Purchaser's responsibility in clause G-120 shall be limited exclusively to the following. These exceptions shall not apply where damages occur due to Purchaser's failure to take reasonable precautions or to exercise sound forest engineering and construction practices.

- a. The State shall bear the cost to repair any existing roadway or section of required road completed to the point that an authorization to haul has been issued where such damage was not caused by Purchaser, its employees, agents, or invitees, including independent contractors. Purchaser shall accomplish repairs promptly as required by the State at an agreed price. The State may elect to accomplish repairs by means of State provided resources. This subclause (subclause "a") may only apply if subclause "b" is not in effect.
- b. The parties shall share equally the cost to repair any part of the required roads constructed under this contract which suffer catastrophic damage, except that Purchaser shall be solely responsible for the first \$5,000.00. Catastrophic damage is defined as State identified damage valued in excess of \$5,000.00, resulting from a single event caused by forces beyond the control and without the negligence of Purchaser, such as earthquakes, volcanic eruptions, landslides, and floods. Purchaser shall accomplish repairs promptly as required by the State at an agreed price. The State may elect to accomplish repairs by means of State provided resources; in which event, Purchaser shall continue to share equally in the cost.

Nothing contained in clauses G-120 and G-130 shall be construed as relieving Purchaser of responsibility for, or damage resulting from, Purchaser's operations or negligence, nor shall Purchaser be relieved from full responsibility for making good any defective work or materials.

#### G-140 Indemnity

To the fullest extent permitted by law, Purchaser shall indemnify, defend and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims arising out of or resulting from the performance of the contract. "Claim" as used in this contract means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorneys' fees, attributable for bodily injury, sickness, disease or death, or injury to or destruction of tangible property including loss of use resulting therefrom. Purchasers' obligations to indemnify, defend, and hold harmless includes any claim by Purchasers' agents, employees, representatives, or any subcontractor or its employees. Purchaser expressly agrees to indemnify, defend, and hold harmless State for any claim arising out of or incident to Purchasers' or any subcontractors' performance or failure to perform the contract. Purchasers' obligation to indemnify, defend, and hold harmless State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials. Purchaser waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

#### G-150 Insurance

Purchaser and/or contractor(s) shall, at its cost and expense, buy and maintain insurance of the types and amounts listed below. Failure to buy and maintain the required insurance may result in a breach and/or termination of the contract at State's option. State may suspend Purchaser operations until required insurance has been secured.

All insurance and surety bonds should be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by the department's risk manager before the insurance coverage is accepted. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

The State of Washington, Department of Natural Resources region office of sale origin shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications:

1. Insurers subject to Chapter 48.18 RCW (admitted and regulated by the Insurance Commissioner): The insurer shall give the State 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.
2. Insurers subject to Chapter 48.15 RCW (surplus lines): The State shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.

Before starting work, Purchaser shall furnish State of Washington, Department of Natural Resources with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified in the contract. Insurance coverage shall be obtained by the purchaser and/or contractor(s) prior to operations commencing and continually maintained in full force until all contract obligations have been satisfied or an operating release has been signed by the State.

Purchaser shall include all subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of subcontractor(s) to comply with insurance requirements does not limit Purchaser's liability or responsibility.

The State of Washington, Department of Natural Resources, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella, and property insurance policies.

All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by State. Purchaser waives all rights against State for recovery of damages to the extent these damages are covered by general liability or umbrella insurance maintained pursuant to this contract.

If Purchaser is self-insured, evidence of its status as a self-insured entity shall be provided to State. If requested by State, Purchaser must describe its financial condition and the self-insured funding mechanism.

By requiring insurance herein, State does not represent that coverage and limits will be adequate to protect Purchaser and such coverage and limits shall not limit Purchaser's liability under the indemnities and reimbursements granted to State in this contract.

The limits of insurance, which may be increased as deemed necessary by State of Washington, Department of Natural Resources, shall not be less than as follows:

Commercial General Liability (CGL) Insurance. Purchaser shall maintain general liability (CGL) insurance, and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000.00 per each occurrence. If such CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract), and contain separation of insured (cross liability) condition.

Employer's Liability "Stop Gap" Insurance. Purchaser shall buy employers liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000.00 each accident for bodily injury by accident or \$1,000,000.00 each employee for bodily injury by disease.



Workers' Compensation Coverage. Purchaser shall comply with all State of Washington workers' compensation statutes and regulations. Workers' compensation coverage shall be provided for all employees of Purchaser and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which exists out of or in connection with the performance of this contract. Except as prohibited by law, Purchaser waives all rights of subrogation against State for recovery of damages to the extent they are covered by workers' compensation, employer's liability, commercial general liability, or commercial umbrella liability insurance.

If Purchaser, contractor, subcontractor or sub-subcontractor fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Purchaser shall indemnify State. Indemnity shall include all fines, payment of benefits to Purchaser or contractor(s) or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees.

Business Auto Policy (BAP). Purchaser shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000.00 per accident. Such insurance shall cover liability arising out of "Any Auto". Business auto coverage shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary the policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01. Purchaser waives all rights against State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

#### G-160 Agents

The State's rights and duties will be exercised by the Region Manager at Sedro Woolley, Washington. The Region Manager will notify Purchaser in writing who is responsible for administering the contract. The Region Manager has sole authority to waive, modify, or amend the terms of this contract in the manner prescribed in clause G-180. No agent, employee, or representative of the State has any authority to bind the State to any affirmation, representation, or warranty concerning the forest products conveyed beyond the terms of this contract.

Purchaser is required to have a person on site during all operations who is authorized to receive instructions and notices from the State. Purchaser shall inform the State in writing who is authorized to receive instructions and notices from the State, and any limits to this person's authority.

#### G-170 Assignment and Delegation

No rights or interest in this contract shall be assigned by Purchaser without prior written permission of the State. Any attempted assignment shall be void and ineffective for all purposes unless made in conformity with this paragraph. Purchaser may perform any duty through a delegate, but Purchaser is not thereby relieved of any duty to perform or any liability. Any assignee or delegate shall be bound by the terms of the contract in the same manner as Purchaser.

#### G-180 Modifications

Waivers, modifications, or amendments of the terms of this contract must be in writing signed by Purchaser and the State.

#### G-190 Contract Complete

This contract is the final expression of the Parties' agreement. There are no understandings, agreements, or representations, expressed or implied, which are not specified in this contract.

#### G-200 Notice

Notices required to be given under the following clauses shall be in writing and shall be delivered to Purchaser's authorized agent or sent by certified mail to Purchaser's post office address:

G-210 Violation of Contract  
G-220 State Suspends Operations

All other notices required to be given under this contract shall be in writing and delivered to the authorized agent or mailed to the Party's post office address. Purchaser agrees to notify the State of any change of address.

G-210 Violation of Contract

- a. If Purchaser violates any provision of this contract, the Contract Administrator, by written notice, may suspend those operations in violation. If the violation is capable of being remedied, Purchaser has 30 days after receipt of a suspension notice to remedy the violation. If the violation cannot be remedied (such as a violation of WAC 240-15-015) or Purchaser fails to remedy the violation within 30 days after receipt of a suspension notice, the State may terminate the rights of Purchaser under this contract and collect damages.
- b. If the contract expires pursuant to clause G-030 or G-031 without Purchaser having performed all its duties under this contract, Purchaser's right to operate is terminated and Purchaser shall not have the right to remedy the breach. This provision shall not relieve Purchaser of any payment obligations.
- c. The State has the right to remedy the breach in the absence of any indicated attempt by Purchaser or if Purchaser is unable, as determined by the State, to remedy the breach. Any expense incurred by the State shall be charged to Purchaser and shall be paid within 30 days of receipt of billing.
- d. If Purchaser's violation is a result of a failure to make a payment when due, in addition to a. and b. above, interest shall accrue on the unpaid balance at 12 percent per annum, beginning the date payment was due.

G-220 State Suspends Operation

The Contract Administrator may suspend any operation of Purchaser under this contract when the State is suffering, or there is a reasonable expectation the State will suffer environmental, monetary, or other damage if the operation is allowed to continue.

Purchaser shall be in breach of this contract if the operation continues after the suspension notice or if the operation resumes without prior approval and notice from the Contract Administrator.

Purchaser may request a modification of a suspension within 30 days of the start of suspension through the dispute resolution process in clause G-240. If this process results in a finding that the suspension exceeded the time reasonably necessary to stop or prevent damage to the State, Purchaser is entitled to request a contract term adjustment under clause G-040.

If it reasonably appears that the damage that the State is suffering, or can reasonably be expected to suffer if the operation is allowed to continue, will prevent harvest for a period that will exceed 6 months, and Purchaser has complied with this contract, the provisions of clause G-066 shall govern just as if the harvest was prevented by an applicable foreign or domestic governmental regulation or order.

G-230 Unauthorized Activity

Any cutting, removal, or damage of forest products by Purchaser, its employees, agents, or invitees, including independent contractors, in a manner inconsistent with the terms of this contract or State law, is unauthorized. Such activity may subject Purchaser to liability for triple the value of said forest products under RCW 79.02.320 or RCW 79.02.300 and may result in prosecution under RCW 79.02.330 or other applicable statutes.

G-240 Dispute Resolution

The following procedures apply in the event of a dispute regarding interpretation or administration of this contract and the parties agree that these procedures must be followed before a lawsuit can be initiated.

- a. In the event of a dispute, Purchaser must make a written request to the Region Manager for resolution prior to seeking other relief.
- b. The Region Manager will issue a written decision on Purchaser's request within ten business days.
- c. Within ten business days of receipt of the Region Manager's decision, Purchaser may make a written request for resolution to the Lands Steward of the Department of Natural Resources.
- d. Unless otherwise agreed, a conference will be held by the Department Lands Steward within 30 calendar days of the receipt of Purchaser's request for review of the Region Manager's written decision. Purchaser and the Region Manager will have an opportunity to present their positions. The Department Lands Steward will issue a decision within a reasonable time of being presented with both Parties' positions.

G-250 Compliance with All Laws

Purchaser shall comply with all applicable statutes, regulations and laws, including, but not limited to, the applicable requirements of WAC 240-15-015 (relating to prohibitions on export and substitution), WAC 240-15-025 (relating to reporting requirements), and WAC 240-15-030 (relating to enforcement).

G-260 Venue

This contract shall be governed by the laws of the State of Washington. In the event of a lawsuit involving this contract, venue shall be proper only in Thurston County Superior Court.

G-270 Equipment Left on State Land

All equipment owned or in the possession of Purchaser, its employees, agents, or invitees, including independent contractors, shall be removed from the sale area and other State land by the termination date of this contract. Equipment remaining unclaimed on State land 60 days after the expiration of the contract period is subject to disposition as provided by law. Purchaser shall pay to the State all costs of moving, storing, and disposing of such equipment. The State shall not be responsible for any damages to or loss of the equipment or damage caused by the moving, storing or disposal of the equipment.

G-280 Operating Release

An operating release is a written document, signed by the State and Purchaser, indicating that Purchaser has been relieved of certain rights or responsibilities with regard to the entire or a portion of the timber sales contract. Purchaser and State may agree to an operating release for this sale, or portion of this sale, prior to the contract expiration, when all contract requirements pertaining to the release area have been satisfactorily completed. Upon issuance of a release, Purchaser's right to cut and remove forest products on the released area will terminate.

G-310 Road Use Authorization

Purchaser is authorized to use the following State roads and roads for which the State has acquired easements and road use permits; the HM-ML, HM-18, HM-19, HM-1802, HM-20, HM-21, and HM-22 Roads. The State may authorize in writing the use of other roads subject to fees, restrictions, and prior rights.

G-330 Pre-work Conference

Purchaser shall arrange with the Contract Administrator to review this contract and to examine the sale area before beginning any operations. A plan of operations shall be developed and agreed upon by the Contract Administrator and Purchaser before

beginning any operations. To the extent that the plan of operations is inconsistent with the contract, the terms of the contract shall prevail. State's acceptance and approval of Purchaser's plan of operations shall not be construed as any statement or warranty that the plan of operations is adequate for Purchaser's purposes or complies with applicable laws.

G-340 Preservation of Markers

Any legal land subdivision survey corners and witness objects are to be preserved. If such are destroyed or disturbed, Purchaser shall have a licensed land surveyor re-establish them.

G-360 Road Use Reservation

The State shall have the right to use, without charge, all existing roads and any road constructed or reconstructed on State lands by Purchaser under this contract. The State may extend such rights to others. If the State grants such rights to others, the State shall require performance or payment, as directed by the State, for their proportionate share of maintenance based on their use.

G-370 Blocking Roads

Purchaser shall not block the HM-ML and the HM-19 Roads unless authority is granted in writing by the Contract Administrator.

G-380 Road Easement and Road Use Permit Requirements

Purchaser agrees to comply with the terms and conditions of the attached:

Easement with Summit Timber Company, dated May 15, 1967.

G-430 Open Fires

Purchaser shall not set, or allow to be set by Purchaser's employees, agents, invitees and independent contractors, any open fire at any time of the year without first obtaining permission, in writing, from the Contract Administrator.

G-450 Encumbrances

This contract and Purchaser's activities are subject to the following:

Subject to easement for a Right of Way Existing Road, heretofore granted under Application No. 50-031826, for an indefinite term.

Subject to easement for a Right of Way Existing Road, heretofore granted under Application No. 50-033557, for an indefinite term.

Subject to easement for a Right of Way Existing Road, heretofore granted under Application No. 50-033558, for an indefinite term.

Section P: Payments and Securities

P-010 Initial Deposit

Purchaser paid DATA MISSING initial deposit, which will be maintained pursuant to RCW 79.15.100. If the Purchaser fails to complete all contractual obligations before the contract term expires, the initial deposit will be immediately forfeited to the State.

P-024 Payment for Forest Products

Purchaser agrees to pay the following rate per ton for forest products conveyed plus \$32,051.75 on day of sale and \$1.34 per ton upon removal in fees. Fees collected shall be retained by the state unless the contract is adjusted via the G-066 clause.

DATA MISSING

P-040 Guarantee of Payment

Purchaser will pay for forest products prior to cutting or will guarantee payment by posting an approved payment security. The amount of cash or payment security shall be determined by the State and shall equal or exceed the value of the cutting proposed by Purchaser.

P-052    Payment Procedure

If a third party Log and Load Reporting Service (LLRS) is required by this contract the State will compute and forward to the Purchaser statements of charges provided for in the contract. Purchaser shall deliver payment to the Northwest region office on or before the date shown on the billing statement.

If a third party LLRS is not required by this contract, Purchaser shall pay for forest products removed on a monthly basis. Payments will be submitted to the Northwest region office on or before the fourteenth of the month following the month in which the timber was removed or, according to an alternate payment schedule as approved by the State with at least one payment each month for timber removed. The alternate payment schedule, once approved by the State, shall become part of this contract and may be changed only with written approval of the State.

Payment will be based on the contract rate multiplied by the tonnage removed during the month or payment period. Included with the payment will be a summary report along with all related load tickets and the corresponding certified weight tickets for the payment period. The summary report will be generated using a computer spreadsheet and list the load tickets in ascending numerical order with the corresponding weight ticket number and weight for each load.

P-070    Payment for Products: Damage, Theft, Loss or Mismanufacture

Forest products included in this agreement which are destroyed, damaged, stolen, lost, or mismanufactured shall be paid for by Purchaser on demand of the State. The rates contained in clause P-024 shall apply.

P-080    Payment Account Refund

Advance payments made under P-040 remaining on account above the value for the charges shall be returned to Purchaser within 30 days following the final report of charges. Refunds not made within the 30 day period will accrue interest at the interest rate, as established by WAC 332-100-030, computed on a daily basis until paid.

P-090    Performance Security

Purchaser agrees to furnish, within 30 days of the confirmation date, security acceptable to the State in the amount of \$64,200.00. The Security provided shall guarantee performance of all provisions of this contract and payment of any damages caused by operations under this contract or resulting from Purchaser's noncompliance with any rule or law. Acceptable performance security may be in the form of a performance bond, irrevocable letter of credit, cash or savings account assignments, and must name the State as the obligee or beneficiary. A letter of credit must comply with Title 62A RCW, Article 5. Performance security must remain in full force over the duration of the contract length. Surety bonds issued shall conform to the issuance and rating requirements in clause G-150. The State shall retain the performance security pursuant to RCW 79.15.100. Purchaser shall not operate unless the performance security has been accepted by the State. If at any time the State decides that the security document or amount has become unsatisfactory, Purchaser agrees to suspend operations and, within 30 days of notification, to replace the security with one acceptable to the State or to supplement the amount of the existing security.

P-100    Performance Security Reduction

The State may reduce the performance security after an operating release has been issued if the State determines that adequate security exists for any remaining obligations of Purchaser.

Section L:    Log Definitions and Accountability

L-060    Load Tickets

Purchaser shall complete and use load tickets as directed by the Contract Administrator and, if required, use other identification as directed by the State to ensure accounting of forest products removed from the sale area. A load ticket must be fixed, as designated by the Contract Administrator, to each truck and trailer load prior to leaving the landing.

Purchaser shall account for all load tickets issued by the Contract Administrator. The State may treat load tickets not accounted for as lost forest products. All costs associated with computing the billings for lost loads shall be borne by Purchaser.

L-071 Log and Load Reporting Service

This contract requires the use of a State approved third party Log and Load Reporting Service (LLRS). Purchaser shall ensure log volume measurement data and/or load and weight data is received by the LLRS within 24 hours of logs being measured or weighed. Purchaser agrees to pay the LLRS for log and load data supplied to the State.

If during the term of this contract, the State discontinues use of the LLRS, the State will notify the Purchaser in writing and the Purchaser will then be responsible to send log scale and/or weight information to the State.

L-110 State Approval of Log Scaling and Weighing Locations

Log measurement and weighing facilities required by this contract must be approved by the State. Forest products sold under the contract which require log scaling shall be scaled, measured, or counted by a State approved third party log scaling organization. Forest product sold under the contract which require weighing shall be weighed at a location that meets Washington State Department of Agriculture approval.

Prior to logs being hauled, the Contract Administrator must authorize in writing the use of State approved measurement and/or weighing facilities that are at or en-route to final destinations. Logs from this sale shall be measured or weighed at facilities, which are currently approved for use by the State and are currently authorized for this sale. The State reserves the right to verify load volume and weights with State employees or contractors at the State's own expense. The State reserves the right to revoke the authorization of previously approved measurement locations.

Section H: Harvesting Operations

H-010 Cutting and Yarding Schedule

Falling and Yarding will not be permitted from November 1 to March 31 unless authorized in writing by the Contract Administrator.

H-011 Certification of Fallers and Yarder Operators

All persons engaged in the felling and yarding of timber must receive certification in writing from the Contract Administrator. Certification may be revoked when the Contract Administrator determines that non-compliance of leave tree selection criteria or cut tree selection criteria is occurring, or excessive damage to leave trees or skid trails is occurring.

Excessive damage for leave trees is defined in clause H-012.

Excessive skid trail damage is defined in clause H-013 or H-014.

When leave tree damage exceeds the limits set forth in clause H-012, Purchaser shall be subject to liquidated damages (clause D-040 or D-041).

H-012 Leave Tree Damage Definition

Leave tree damage exists when one or more of the following criteria are satisfied as a result of Purchaser's operation:

- a. A leave tree has one or more scars on its trunk exposing the cambium layer, which in total exceeds 100 square inches.
- b. A leave tree top is broken or the live crown ratio is reduced below 30 percent.
- c. A leave tree has more than 1/3 of the circumference of its root system injured such that the cambium layer is exposed.

Excessive damage is established when more than 5 percent of the leave trees are damaged in a unit (see clause D-040 or D-041). The damaged trees will be identified by the Contract Administrator.

#### H-013 Skid Trail Requirements

A skid trail is defined as an area that is used for more than three passes by any equipment.

Purchaser shall comply with the following during the yarding operation:

- a. Skid trails will not exceed 15 feet in width, including rub trees.
- b. Skid trails shall not cover more than 20 percent of the total acreage on one unit.
- c. Skid trail location will be pre-approved by the Contract Administrator.
- d. Trees within skid trails shall be felled and yarded prior to the felling of adjacent timber.
- e. Excessive skid trail damage is not permitted. Skid trail damage is considered excessive when more than 10 percent of the active trail has ruts over 4 inches in depth.
- f. Skid trails will be water barred at the time of completion of yarding, if required by the Contract Administrator.
- g. Rub trees along the skid trail shall be left standing until all timber tributary to the skid trail has been removed.

Purchaser shall not deviate from the requirements set forth in this clause without prior written approval from the Contract Administrator.

#### H-020 Stage Logging

All of Unit #1 (if elected to be harvested, per clause H-140 B) and Unit #2 (before any harvest activities in units #3, 4, 5, and 6), unless approved otherwise by the Contract Administrator, must be yarded prior to felling the remaining timber.

#### H-035 Fall Trees Into Sale Area

Trees shall be felled into the sale area unless otherwise approved by the Contract Administrator.

#### H-050 Rub Trees

Trees designated for cutting along skid trails shall be left standing as rub trees until all timber that is tributary to the skid trail has been removed.

#### H-052 Branding and Painting

Forest products shall be branded with a brand furnished by the State prior to removal from the landing. All purchased timber shall be branded in a manner that meets the requirements of WAC 240-15-030(2)(a)(i). All timber purchased under a contract designated as export restricted shall also be painted in a manner that meets the requirements of WAC 240-15-030(2)(a)(ii).

In addition, Purchaser shall brand at both ends at least 20 percent of all logs less than 10 inches in diameter. Also, 20 percent of all logs less than 10 inches in diameter purchased under a contract designated as export restricted shall be painted at both ends with durable red paint.

#### H-060 Skid Trail Locations

Locations of skid trails must be marked by Purchaser and approved by the Contract Administrator prior to the felling of timber.

H-080 Snags Not to be Felled

Snags not required to be felled for safety reasons may be left standing.

H-110 Stump Height

Trees shall be cut as close to the ground as practicable. Stump height shall not exceed 12 inches in height measured on the uphill side, or 2 inches above the root collar, whichever is higher.

H-120 Harvesting Equipment

Forest products sold under this contract shall be felled by chainsaw in cable designated areas; chainsaw or feller- buncher in ground-based areas as designated on the timber sale map, and yarded by cable; cable or grapple skidder and/or forwarder as designated on the timber sale map, unless authority to use other equipment is granted in writing by the State.

H-130 Hauling Schedule

The hauling of forest products will not be permitted from November 1 to March 31 unless authorized in writing by the Contract Administrator .

H-140 Special Harvest Requirements

Purchaser shall accomplish the following during the harvest operations:

- A. Designated Skid Trail used for Units #1 and Unit #2 is limited to June 1 through Sept 30.
- B. Harvest in Unit #1 is optional. If corridors are cut to remove timber, the unit prescription must be applied 50 feet either side of the cut corridor.
- C. Begin Unit #1 and Unit #2 harvest operations at station 33+47, of the Designated Skid Trail, and water-bar the Trail upon completion of each setting along the Trail as the operation progresses westward. This sale will need a mobile tracked tower or a means to move a tower along on the designated skid trail, other than use of a lowboy, as approved by the Contract Administrator.
- D. No tail holds shall be allowed on large “remnant” trees. These trees are not to be felled or removed.
- E. A minimum of front-end suspension is required on all cable operations.
- F. BARK SLIPPAGE: Cutting and yarding will not be permitted during the bark slippage season, unless authorized in writing by the Contract Administrator. This season is estimated to run from April 1 to July 15, but will vary dependent on weather conditions. If permission is granted to operate during the bark slippage season, the Purchaser will be required to provide a plan outlining mitigation measures.
- G. No tops or limbs will be allowed to accumulate on any landings. Tops and limbs will be redistributed in the unit to the satisfaction of the Contract Administer.
- H. Highway signs shall be posted, before harvest activities commence, on Highway 530. One sign shall be posted 500 feet to the east and one sign 500 feet to the west of the (Highway 530) junction with C-Post Road. Signs to read: “Caution! Trucks Entering Highway 500 feet”.
- I. Signs shall be posted, before harvest activities commence, at or near the Stillaguamish River Bridge to warn recreation users of temporary trail closure and active logging operations. Signs to read: “Higgins Trail Closed Ahead” and “Caution Logging Traffic”.



- J. Purchaser shall carefully remove the existing (Higgins Mountain) trail sign at beginning of trail (area of the Designated Skid Trail), set aside and reinstall the sign upon completion of harvest.
- K. The sale is divided into compartments as shown on Schedule B map for the purposes of delineating units, per clause D-040, for measurement of leave tree damage and assessment of prescription criteria.
- L. Utility and cull grade definitions are per the official log scaling and grading rules developed by the Northwest Log Rule Advisory Group. Utility shall be paid at the rate specified in H-157.
- M. Use of skidders will be limited to designated skid trails.
- N. Logs must be removed off-site for scaling within 4 weeks of felling.

Permission to do otherwise must be granted in writing by the Contract Administrator.

#### H-157 Optional Removal of Forest Products Not Designated

If in the course of operations, Purchaser decides to remove forest products, that are below the minimum designated removal specifications per the 'Required Removal of Forest Products' clause or that measure less than 5 inches diameter inside bark (dib) on the large end of the log, Purchaser shall pay the State at a rate of \$2.00 dollars per ton. The Contract Administrator must approve all forest products as described in this schedule, prior to removal from the sale area, and all material is subject to the same log and load accountability rules as defined in the "Inadequate Log Accountability" clause of the contract. Purchaser shall follow payment procedures as required in the Payment Procedure clause and will submit a separate report summary for all optional wood removed from the sale area.

#### H-180 Removal of Specialized Forest Products or Firewood

Prior to the removal of conveyed specialized forest products or firewood from the sale area, Purchaser and the State shall agree in writing to the method of accounting for/and removal of such products.

#### H-190 Completion of Settings

Operations begun on any setting of the sale area shall be completed before any operation begins on subsequent settings unless authorized in writing by the Contract Administrator.

#### H-220 Protection of Residual or Adjacent Trees

Unless otherwise specified by this contract, the Contract Administrator shall identify damaged adjacent or leave trees that shall be paid for according to clause G-230.

### Section C: Construction and Maintenance

#### C-040 Road Plan

Road construction and associated work provisions of the Road Plan for this sale, dated 6/17/2004 are hereby made a part of this contract.

#### C-050 Purchaser Road Maintenance and Repair

Purchaser shall perform work at their own cost on the HM-18, HM-1802, HM-20, HM-21, and HM-22 Roads, to prevent damage to sub-grade, to maintain proper drainage and to keep the road surface smooth and crowned.

#### C-060 Designated Road Maintainer

If required by the State, Purchaser shall perform maintenance and replacement work as directed by the Contract Administrator on the existing HM-ML (0+00 to 153+85 and 154+85 to 156+90) road; plus the HM-ML (153+85 to 154+85 and 156+90 to 165+15) roads constructed or reconstructed under this contract after the work is accepted by the State. Purchaser shall furnish a statement in a form satisfactory to the State showing the costs incurred while performing this work. Costs shall be based on the rates set forth in the State's current Equipment Rate Schedule on file at the region and Olympia

offices. The State shall reimburse Purchaser for said costs within 30 days of receipt and approval of the statement.

C-080 Landing Locations Approved Prior to Construction

Landings shall be marked by Purchaser and approved by the Contract Administrator prior to construction.

C-130 Dust Abatement

Purchaser shall abate the dust on the A-1000 and A-1200 roads while hauling as required by the Contract Administrator.

C-140 Water Bars

Purchaser shall, as directed by the Contract Administrator, construct water bars across haul roads, skid trails and fire trails as necessary to control soil erosion and water pollution.

Section S: Site Preparation and Protection

S-010 Fire Hazardous Conditions

Purchaser agrees to use its best efforts to minimize the risk of fire.

S-030 Landing Debris Clean Up

Landing debris shall be disposed of in a manner approved in writing by the Contract Administrator.

S-050 Cessation of Operations for Low Humidity

During the "closed season", when the humidity is 30 percent or lower on the sale area, all operations must cease unless authority to continue is granted by the State in writing.

S-060 Pump Truck or Pump Trailer

Purchaser shall provide a fully functional pump truck or pump trailer equipped to meet the specifications of WAC 332-24-005 and WAC 332-24-405 during the "closed season" or as extended by the State and shall provide trained personnel to operate this equipment on the sale area during all operating periods.

S-100 Stream Cleanout

Slash or debris which enters any streams as a result of operations under this contract and which is identified by the Contract Administrator shall be removed and deposited in a stable position. Removal of slash or debris shall be accomplished in a manner that avoids damage to the natural stream bed and bank vegetation.

S-120 Stream Protection

No timber shall be felled into, across, or yarded through type 5 streams.

S-130 Refuse Disposal

a. Solid and Hazardous Waste Regulatory Compliance.

Purchaser shall meet applicable local, state, and federal solid and hazardous waste laws and regulations concerning the handling and disposal of hazardous materials and hazardous and solid waste, including, but not limited to, Chapters 70.93, 70.95, and 70.105 RCW and Resource Conservation and Recovery Act of 1976 (RCRA) 42 USC Section 6901, et seq.

b. Waste Disposal.

No hazardous or solid waste shall be disposed of by abandonment, burial, or burning on state land. All wastes, including petroleum stained soil on landings or other areas shall be removed from state land and be disposed of at a permitted solid or hazardous waste disposal facility.

c. Hazardous Materials Spill Prevention.

All operations shall be conducted in such a manner as to prevent the discharge of hazardous materials, including petroleum products, into water or air or onto ground.

Fuel tanks and other containers of hazardous materials shall be managed to prevent any drips, leaks or larger spills. Equipment seals, pressure lines, and other potential leak sources shall be maintained in good working condition to eliminate oil, hydraulic fluid, and other leaks.

Equipment maintenance activities, such as oil changes, shall be undertaken so that no oil or other hazardous materials reach the ground. Filters, batteries, and other equipment waste shall be deposited in barrels or otherwise temporarily stored to prevent the leaking of oil, acid, or other hazardous liquids onto the ground.

d. Spill Reporting.

The operator shall take immediate action to contain and control all spills.

Any spill that may be a threat to human health or the environment shall be reported immediately to the Department of Ecology and the Contract Administrator.

Other spills shall be reported to the Contract Administrator.

S-150 Recreation Trail Cleanout

At the completion of logging operations per direction of the Contract Administrator, Purchaser shall repair any damage to and clean out all logging debris from recreational trail(s).

Section D: Damages

D-010 Liquidated Damages

The following clauses provide for payments by Purchaser to the State for certain breaches of the terms of this contract. These payments are agreed to as liquidated damages and not as penalties. They are reasonable estimates of anticipated harm to the State, which will be caused by Purchaser's breach. These liquidated damages provisions are agreed to by the State and Purchaser with the understanding of the difficulty of proving loss and the inconvenience or infeasibility of obtaining an adequate remedy. These liquidated damages provisions provide greater certainty for the Purchaser by allowing the Purchaser to better assess its responsibilities under the contract.

D-021 Failure to Remove Forest Products

Purchaser's failure to remove all or part of the forest products sold in this agreement prior to the expiration of the contract term results in substantial injury to the State. The value of the forest products sold at the time of breach is not readily ascertainable. Purchaser's failure to perform disrupts the State's management plans, the actual cost of which is difficult to assess. A resale involves additional time and expense and is not an adequate remedy. Therefore, Purchaser agrees to pay the State as liquidated damages a sum calculated using the following formula:

$$LD = .35V-ID-P+C+A$$

Where:

LD = Liquidated Damage value.

V = The unremoved value at the date of breach of contract. The value is determined by subtracting the removal tonnage to date from the cruised tonnage multiplied by the contract bid rates.

ID = Initial Deposit paid at date of contract that has not been applied to timber payments.

- P = Advance payments received but not yet applied to specific contract requirements.
- C = Charges assessed for contract requirements completed prior to breach of contract but not paid for.
- A = Administrative Fee = \$2,500.00.

The above formula reflects the Purchaser's forfeiture of the initial deposit in accordance with clause P-010 by deducting the initial deposit from the amount owed. In no event shall the liquidated damages be less than zero. Interest on the liquidated damage is owed from the date of breach until final payment, calculated using the following formula:  $\text{Interest} = r \times \text{LD} \times N$ .

Where:

- r = daily equivalent of an annual interest at current interest rate as established by WAC 332-100-030.
- LD = Liquidated damage value.
- N = Number of days from date of breach to date payment is received.

D-030    Inadequate Log Accountability

Removal of forest products from the sale area without adequate branding and/or valid load tickets attached to the load and scaling forest products in a location other than the facility approved by the State can result in substantial injury to the State. Failure to properly account for loads and scaling and/or weighing information can result in loss to the State. The potential loss from not having proper branding, ticketing, scaling and/or weighing location and accountability is not readily ascertainable. Purchaser's failure to perform results in a loss of log weight and scale accountability, increases the potential for unauthorized removal of forest products, and increases the State's administration costs, the actual costs of which are difficult to assess.

Enforcement actions for unauthorized removal of forest products for each improperly branded load, improperly ticketed load, or use of a facility not authorized for this sale or improper submission of scaling data are impractical, expensive, time consuming and are not an adequate remedy. Therefore, Purchaser agrees to pay the State, as liquidated damages, a sum of \$100 each time a load of logs does not have branding as required in the contract, \$250 each time a load of logs does not have a load ticket as required by the contract, \$250 each time a load ticket has not been filled out as required by the plan of operations, \$250 each time a load is weighed or scaled at a location not approved as required under this contract, \$250 each time a log ticket summary report is not submitted properly, and if a third party Log and Load Reporting Service is required, \$250 each time scaling or weight data is not properly submitted to the Log and Load Reporting Service within 24 hours of log removal.

D-040    Leave Tree Excessive Damage

When Purchaser's operations exceed the damage limits set forth in clause H-012, Leave Tree Damage Definition, the trees damaged result in substantial injury to the State. The value of the damaged leave trees at the time of the breach is not readily ascertainable. Therefore, Purchaser agrees to pay the State as liquidated damages at the rate of \$150.00 per tree for all damaged trees in the unit.

IN WITNESS WHEREOF, the Parties hereto have entered into this contract.

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES

\_\_\_\_\_  
Purchaser

\_\_\_\_\_  
William J. Wallace  
Northwest Regional Manager

Date: \_\_\_\_\_  
Address: \_\_\_\_\_

Date: \_\_\_\_\_

CORPORATE ACKNOWLEDGEMENT

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally  
appeared \_\_\_\_\_  
\_\_\_\_\_ to me known to be the  
\_\_\_\_\_ of the corporation  
that executed the within and foregoing instrument and acknowledged said instrument to be the  
free and voluntary act and deed of the corporation, for the uses and purposes therein mentioned,  
and on oath stated that (he/she was) (they were) authorized to execute said instrument and that  
the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and  
year first above written.

\_\_\_\_\_  
Notary Public in and for the State of  
  
\_\_\_\_\_  
My appointment expires \_\_\_\_\_

**Schedule A**  
**Aria PC Ground-Based Equipment Specifications**

The following types of equipment are considered ground-based equipment: feller-buncher, processor, forwarder, rubber-tired skidder and shovel.

SHOVEL is defined as a low ground pressure track-mounted machine with hydraulic boom and grapple capable of picking up one end of the largest log 25 feet from the center of the machine.

LOG PROCESSOR/DE-LIMBER is defined as a mobile machine with a hydraulic boom capable of simultaneously bucking, delimbing and/or debarking and chipping whole trees while sitting stationary at the landing.

FELLER-BUNCHER/HARVESTER is defined as a track mounted machine with hydraulic boom and cutter head capable of felling, bucking, limbing, and decking logs in one operation.

FORWARDER is defined as a track or rubber tire machine used for transporting logs to a landing by use of a bunk with self loading boom in which logs are carried free of the ground.

RUBBER-TIRED SKIDDER is defined as a skidder mounted on rubber tires used to drag logs to a landing. Logs are generally pulled in groups of six or less, with one end on the ground.

TRACKED SKIDDER is defined as any tracked tractor or skidder, fixed or articulated, used to drag logs to landings. Logs are generally pulled in groups of six or less, with one end on the ground.

The following restrictions shall apply to all ground-based equipment allowed under Clause H-120:

1. Equipment will be limited to slopes 25 percent or less, and as defined on the timber sale map unless otherwise specifically authorized under Clause H-140.
2. The total skid trail area shall not exceed 20% of the sale area. A skid trail is defined as a trail receiving two or more round trips.
3. Location of main skid trails must be marked by the purchaser and approved by the Contract Administrator prior to falling of timber. Skid trails shall be felled and yarded prior to felling adjacent timber.
4. Ground based operations will cease if 10 percent or more of the skid trail system contains ruts of 4 inches or greater, EXCEPT THE DESIGNATED SKID TRAIL OF SECTION 11 IN THE ROAD PLAN.
5. Equipment will remain at least 30 feet from all water courses or areas of wet/soft soils, except as necessary to cross at approved locations. Water course crossing structures must be approved by a HPA or by the Contract Administrator.
6. Equipment operation will be suspended when, in the opinion of the Contract Administrator, soil moisture conditions are such that soil damage would occur if operations continued.
7. Logging debris created by the operation will be removed from water courses concurrently with yarding.
8. Equipment trails will be water barred immediately upon completion of use unless, in the opinion of the Contract Administrator, potential does not exist for water to collect or flow in the trail.
9. Operating restrictions may be added or amended on a case-by-case basis as deemed appropriate, and specified in writing by the Contract Administrator.

In addition, the following restrictions shall apply if shovel yarding is allowed under Clause H-120:

S1. When yarding and loading operations are occurring simultaneously, an additional shovel will be required for loading to avoid extra trips to the landing.

S2. Shovel yarding will not be allowed to create ruts or soil puddling. Shovel routes should be dispersed to prevent creation of definable trails.

S3. Within shovel logged areas, to facilitate proper reforestation, logging debris will be dispersed as necessary to create clear, plantable spots at approximately a 11 foot x 11 foot spacing. Planting spots will be created concurrently with yarding.

Log processors will be allowed within the sale area only under one of the following conditions:

1. No tops or limbs will be allowed to accumulate on any landings, and all tops and limbs will be re-distributed into the unit, to the satisfaction of the Contract Administrator, and will provide for plantable spots every 11 feet by 11 feet.

2. Purchaser must provide a written slash treatment plan, acceptable to the Contract Administrator, to address the additional slash accumulation. The Slash Treatment Plan will be a part of the Plan of Operations.



**Schedule B**  
**Aria PC Thinning Prescription**

Utility and cull grade definitions are per the official log scaling and grading rules developed by the Northwest Log Rule Advisory Group. Utility shall be paid at the rate specified in H-157.

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Unit 1:

Cut all red alder (RA)  
Cut Douglas-fir (DF) and western hemlock (WH) to 19.5 foot spacing (115 TPA).

Leave biggest and best trees.  
Cut no western redcedar.

Best tree definition is having the following characteristics:

- Fullest and most vigorous crowns; largest diameter
- Free of disease and major deformity

If a corridor is cut (however long), the area 50 feet either side of the corridor MUST be thinned to the prescription (19.5'X19.5').

Definitions:

Diseased Tree: any tree that is infested with Dwarf Mistletoe to the point that at least 2/3's of its crown contains witch brooms.

Deformed Tree: any tree that has forked tops, broken tops, or severe cat faces (bark removed on more than half of the circumference of the tree).

Compliance – fixed plot

A 1/20 acre fixed radius plot (26.3) will be measured to determine trees per acre. The number of trees greater than 7" DBH in a plot will be multiplied by 20 to determine the trees per acre for that plot. The average of all plots in a unit will determine the trees per acre for that compartment (see compartment map as defined in clauses H-140 and D-040).

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Unit 2:

Cut all RA  
Cut DF 7-12 inches diameter at breast height (DBH)  
Cut WH 7-12 inches DBH

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Unit 3:

Cut all RA  
Cut WH 7-13 inches DBH

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Unit 4:

Cut all RA  
Cut WH 7-13 inches DBH

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Unit 5:

Cut all RA  
Cut WH 7-13 inches DBH

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Unit 6:

Cut all RA

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GROUND-BASED SEASON: No cutting and yarding between November 1 and March 31, except authorized by Contract Administrator, as per clause H-010.

**SPECIAL THINNING CONDITIONS:** In areas where prescription trees (Removal Trees) do not exist, do not put in corridors in that area.

**CORRIDORS:**

**GROUND-BASED YARDING CORRIDORS:** Limit to 15 feet wide (including rub trees) and no less than 70 feet apart.

**CABLE CORRIDORS:** Landings will be located to provide for parallel yarding corridors whenever possible. Corridors will be limited to 12 feet including rub trees. Corridors will be at least 100 feet apart when parallel as measured from the center of the corridors. When radial yarding corridors are required from a central landing, the distance between yarding corridor must be no closer than 100 feet where the corridor leaves the unit as measured from the center of the corridors. Where possible, corridors should be located in a manner to minimize the damage to or removal of leave trees. When corridors are field located, only leave trees within 3-5 feet of the center to the corridor should be removed prior to yarding. Following completion of yarding of each corridor, damaged leave trees within 6 feet of the center of the corridor may be felled and yarded to the landing. It is not required to remove all leave trees from the 12-foot corridor.

**CERTIFICATION OF FALLERS AND YARDER OPERATORS – SEE CLAUSE H-011 OF THE CONTRACT.**

**ADDITIONAL REQUIREMENTS:**

The Contract Administrator and Faller/Harvester Operator will jointly review the take tree selection criteria as outlined in this Schedule of the contract.

In conjunction with the Contract Administrator, the Faller/Harvester Operator will mark a designated area as a test plot within the sale area boundary. Satisfactory thinning of the test plot completes the certification process.

Certifications will be issued to individuals when they demonstrate to the Contract Administrator their ability to perform within the requirements set forth in the contract.

**Schedule C**  
**Aria PC Required Removal of Forest Products**

( H-150)

Purchaser shall remove from the sale area and present for scaling all merchantable forest products conveyed in the G-010 clause that meet the following minimum dimensions:

Species	Net bd ft	Log length (ft)	Log dib at the small end
Douglas-fir	20	12	5
Western Hemlock	20	12	5
Red Alder	20	12	5

The State may treat failure to remove forest products left on the sale area that meet the above specifications as a breach of this contract. At the State's option, forest products that meet the above specifications and are left on the sale area may be scaled for volume or measured and converted to weight by the State or a third party scaling organization and billed to Purchaser at the contract payment rate. All costs associated with scaling, measuring and computing the billing will be borne by the Purchaser.